

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 135.11 and 135.29, the Department of Public Health hereby amends Chapter 85, "Local Substitute Medical Decision-Making Boards," Iowa Administrative Code.

The rules in Chapter 85 describe the requirements and procedures for local substitute medical decision-making boards. These amendments remove references to the state substitute medical decision-making board. In 2010 Iowa Acts, chapter 1031, section 399, the legislature repealed Iowa Code section 135.28 that established the state substitute medical decision-making board.

Notice of Intended Action was published in the January 25, 2012, Iowa Administrative Bulletin as **ARC 9976B**. No written comments were received. One change was made to the amendments published under Notice in order to correct an outdated Iowa Code reference in renumbered rule 641—85.10(135).

The State Board of Health adopted these amendments on March 14, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments will become effective on May 9, 2012.

These amendments are intended to implement Iowa Code section 135.29.

The following amendments are adopted.

ITEM 1. Amend subrule 85.2(7) as follows:

85.2(7) "*Panel*" means a group of three or more members of a local board ~~or the state board~~ who are appointed by the chairperson of that board to hear a case when an application has been filed with the board ~~or when an appeal has been filed with the state board~~.

ITEM 2. Amend subrule 85.2(10) as follows:

85.2(10) "*Physician*" means any individual licensed under Iowa Code chapter 148, 150, ~~or 150A~~.

ITEM 3. Rescind subrule **85.2(11)**.

ITEM 4. Amend subrule 85.3(5) as follows:

85.3(5) The county board of supervisors shall notify the ~~state board~~ department when a local board is appointed and shall submit a list of the members appointed.

ITEM 5. Amend rule 641—85.9(135) as follows:

641—85.9(135) Right of appeal.

85.9(1) The patient, the person who filed the application, or a correspondent may appeal the local board's decision to the ~~state board~~ department. The appeal must be made before the date and time that the consent becomes effective. The person appealing shall notify the local board or the department of the appeal. The notice of the appeal shall be in writing or by telephone followed by a written appeal to the department. If the appeal is initially made by telephone, the written appeal to the department shall be postmarked within 48 hours of the telephone notice. The written appeal shall state the reason for the appeal. If the initial appeal is made to the local board, the local board representative shall immediately notify the department and the health care provider. If the initial appeal is made to the department, the department representative shall immediately notify the local board and the health care provider.

85.9(2) Upon receipt of the notice of appeal, the local board shall immediately provide a copy of the record of the case to the ~~state board~~ department. ~~The state board chairperson shall appoint a panel to review the case. The panel shall consist of at least three members with the same composition requirements as the local panels as specified in rule 85.6(135).~~ The panel department shall review the record to determine whether the determination by the local panel is supported by substantial evidence. The ~~state panel~~ department shall also review new information which is submitted regarding the case. The ~~state panel's~~ department's decision shall be based on a review of the record and a review of any new information and shall be made in accordance with the provisions for local panel determination in rules

641—85.7(135) and 641—85.8(135). The ~~state-panel's~~ department's decision shall be promptly sent by certified mail, return receipt requested, or otherwise provided by any other means that will provide more timely or reliable written notice to: the patient, the person filing the appeal, the person who filed the application and the chairperson of the local board. If any of these persons are dissatisfied with the ~~state-panel's~~ department's decision, an appeal may be taken in the manner provided by Iowa Code chapter 17A.

ITEM 6. Rescind rule **641—85.10(135)**.

ITEM 7. Renumber rules **641—85.11(135)** and **641—85.12(135)** as **641—85.10(135)** and **641—85.11(135)**.

ITEM 8. Amend renumbered rule 641—85.10(135) as follows:

641—85.10(135) Records and reports. Each fiscal year, prior to October 1, the local board shall submit an annual report to the ~~state-board department~~ on forms provided by the ~~state-board department~~. The report shall include summary information regarding the number, nature and disposition of applications filed with the local board in the preceding year. It shall also include a list of the local board members and officers for the new year and such other information as the ~~state-board department~~ may deem necessary. ~~Members of the state-board or authorized~~ Authorized representatives of the department shall have access to all records of the local boards. All record information which is excluded from public access and inspection pursuant to Iowa Code chapter 22, ~~141~~ 141A or 228 and 42 Code of Federal Regulations Part 2, or any other confidentiality law provision shall be respected by the ~~state-board members and department representatives~~.

ITEM 9. Amend **641—Chapter 85**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~sections 135.28 and~~ section 135.29.

[Filed 3/14/12, effective 5/9/12]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/4/12.